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VIA EMAIL & HAND DELIVERY

August 7, 2015

Mary Jo Borak
California Public Utilities Commission
c/o Environmental Service Associates
550 Kearny Street, Suite 800
San Francisco, CA 94108
mpwsp-eir@esassoc.com

Re: A.12-04-019 – Joint Comments of California-American Water Company, Salinas Valley Water Coalition, and Monterey County Farm Bureau in Response to July 9, 2015 Notice to All Parties

Dear Ms. Borak:

California-American Water Company (“Cal-Am”), Salinas Valley Water Coalition (“SVWC”) and Monterey County Farm Bureau (“Farm Bureau”) (collectively the “Joint Parties”) take this opportunity to provide limited comments on the Energy Division’s Notice to All Parties, dated July 9, 2015 (“Notice”) regarding the Draft Environmental Impact Report (“DEIR”), as well as a comment letter issued by Marina Coast Water District (“MCWD”) on July 29, 2015. The Joint Parties comment on two discrete issues relating to the Notice and the recommendations set forth therein: 1) the role of the Hydrological Working Group (“HWG”) with respect to providing input on the DEIR; and 2) MCWD’s criticism that the HWG’s work on groundwater analysis was improper and should not be relied upon by the California Public Utilities Commission (“Commission”).

DISCUSSION

The Joint Parties do not address the merits of MCWD’s specific recommendations, but believe it is important to respond to MCWD’s attack on the integrity of the HWG members, MCWD’s flawed characterization of the HWG, and MCWD’s lack of candor. MCWD’s comments are inflammatory and derogatory. With these comments, MCWD reveals that instead of trying to offer helpful input on the DEIR, its true objective is to delay and derail the much-needed Monterey Peninsula Water Supply Project (“MPWSP”).

First, many of MCWD's recommendations are based upon its incorrect claim that the HWG should be "neutral." As MCWD is well aware, the HWG was created not as a group of neutral individuals but as a set of representatives of various stakeholders with conflicting agendas. SVWC and Farm Bureau joined the large multi-party settlement agreement to make sure the MPWSP moved forward in a manner that included scientific review by the hydrogeological experts.¹ That settlement agreement sets forth the process for Cal-Am, SVWC and the Farm Bureau to form the HWG, which would determine the studies, well tests, field work, modeling, monitoring, and other data analyses most appropriate to assess and characterize whether and to what extent the proposed operation of the MPWSP may adversely affect the Salinas River Groundwater Basin and the water supply available to legal water users thereof. There was no expectation that the members of the HWG would be "neutral" participants. Rather, the stakeholder participants that made up the HWG, who represented a variety of interests, would have to collaborate in order to reach consensus.

MCWD showed little interest in this opportunity for collaboration and consensus-building. It could have joined in the settlement agreement and participated in the HWG, but chose not to avail itself of the opportunity. Instead, MCWD now attempts to attack the integrity of the HWG members, claiming that Geoscience Support Services, Inc. ("Geoscience") and the HWG members were biased and allegedly had separate interests in the success of the MPWSP. MCWD broadly claims that each of the four members of the HWG had personal financial interests in the MPWSP coloring their analysis and therefore the Commission cannot rely on any of the work of the HWG members. MCWD made these same assertions about the diverse interests of the HWG members in *Marina Coast Water District v. California Coastal Commission, et al.*, No. CV180839 (Santa Cruz Superior Court), and the court did not find MCWD's arguments to be persuasive.²

Even if the HWG members acting collectively were biased, it is not error for the Commission to rely upon evidence from a source that comes from biased sources. Indeed, it is the agency's obligation to consider all evidence and decide what weight to give it. (*See Sinaiko v. Superior Court* 122 Cal.App.4th 1133, 1141 (2004).)

¹ The Large Settlement Agreement was submitted to the Commission for review on July 31, 2013, and entered by the following parties: Cal-Am, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, Division of Ratepayer Advocates (predecessor to the Office of Ratepayer Advocates), Landwatch Monterey County, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, Planning and Conservation League Foundation, SVWC, Sierra Club, and Surfrider Foundation.

² In this litigation, MCWD sued the California Coastal Commission and Cal-Am as real party in interest, alleging that the California Coastal Commission violated the Coastal Act, CEQA, and related regulations when it issued two Coastal Development Permits authorizing Cal-Am to construct then operate its temporary test slant well. On July 23, 2015, after hearing argument from MCWD and other parties, including MCWD's argument about a potential conflict of interest, the court denied MCWD's writ petition.

The HWG presented a unique opportunity for a group of experienced and talented experts, with distinct and sometimes contradictory goals, to work together to develop data to be used to analyze whether and how the proposed operation of the MPWSP could affect the Salinas River Groundwater Basin. MCWD had the opportunity to be part of this process and influence the data developed. Having forgone that opportunity, MCWD now seeks to distract from the clear value of the HWG output with its false claims regarding neutrality.

Second, MCWD's claims that the HWG members directed the DEIR's investigation, modeling analysis of groundwater are similarly incorrect. While the Energy Division solicited input from the HWG members, it is absolutely untrue that the HWG acted improperly in providing input to the Energy Division. The HWG members did not direct the Energy Division's preparation of the DEIR, nor did they choose how the Energy Division presented the groundwater analysis in the DEIR. In no way did the Energy Division relinquish any of its authority to the HWG by seeking input from these experienced technical experts.

The Energy Division acted properly and used its independent expertise and judgment to evaluate the input of the HWG and to analyze the MPWSP and its effects. The Commission and its staff continue to be able to reject any work product that they find incorrect or not useful. Furthermore, despite MCWD's misplaced claims that the groundwater modeling was only shared with a few settling parties,³ the HWG's input on issues related to the DEIR does not discount or limit the ability of public agencies, such as the State Water Resources Control Board, to analyze the groundwater issues related to the MPWSP.⁴ Nor does the HWG's input discount or limit the ability of the public at large to comment on the DEIR and the accuracy of its conclusions.

Finally, MCWD claims that there is an "obvious" conflict of interest because of the alleged potential future income for Dennis Williams and Geoscience beyond the current consulting contracts.⁵ This appears to be a reference to the patents held by Geoscience. Tellingly, MCWD fails to disclose that it had no such concerns when it hired Geoscience through its sub-consultant RMC Water and Environment ("RMC") for work on the Regional Desalination Project ("RDP").⁶ MCWD paid Geoscience in 2010 and 2011 for groundwater work on the RDP,⁷ but never raised this issue of a potential conflict of interest, even though RMC received notice of a pending Geoscience patent that would relate to the RDP. Attached is a copy of the notice Geoscience sent to RMC of the pending Geoscience patent on May 13, 2011.

³ MCWD Comment Letter, p. 3, fn 3.

⁴ Indeed, the DEIR references the State Water Resources Control Board's review of the MPWSP's groundwater impacts to the Salinas River Groundwater Basin. *See* DEIR, p. ES-80, ES-81. *See also* *SWRCB Final Report on Analysis of Monterey Peninsula Water Supply Project Proposed in Application 12-04-019 by California American Water Company*, dated July 31, 2013, available at <www.swrcb.ca.gov/waterrights/water_issues/programs/hearings/caw_mpws/index.shtml>.

⁵ MCWD Comment Letter, p. 6.


⁶ MCWD claims to be "intimately familiar" with groundwater impacts to the Salinas River Groundwater Basin due to its participation in the RDP. MCWD Comment Letter, p. 10.

⁷ Through its sub-consultant RMC, MCWD received services from Geosciences for work on the RDP on the following dates and for the following invoiced amounts: May 28, 2010 for \$7,590; April 29, 2011 for \$10,680; and May 27, 2011 for \$8,540.


MCWD was well aware of the patent issue and its attempt to bring up this issue as though it has only now come to light is disingenuous. MCWD's actions demonstrate that its conflict of interest concerns are not sincere. Once again, MWCD reveals that its true intention is to attack the HWG and CEQA process in hopes of delaying or derailing the MPWSP. Accordingly, the Energy Division should ignore MCWD's attempts to impugn the credibility of the HWG and their efforts to provide input for the DEIR and collaboratively work together towards a solution in addressing groundwater impacts for the MPWSP.

Respectfully submitted,

Dated: August 7, 2015

By: 
Richard C. Svindland
California American Water
4701 Beloit Drive
Sacramento, CA 95838
For: California-American Water Company

Dated: August 7, 2015

By: 
Nancy Isakson
President
Salinas Valley Water Coalition
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For: Salinas Valley Water Coalition

Dated: August __, 2015

By: _____
Norman C. Groot
Monterey County Farm Bureau
P.O. Box 1449
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For: Monterey County Farm Bureau

cc: Service List for A.12-04-019 (with attachment)

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Respectfully submitted,

Dated: August __, 2015

By:

Richard C. Svindland
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For: California-American Water Company

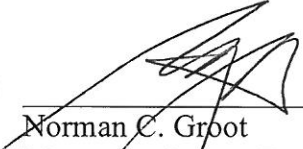
Dated: August __, 2015

By:

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Dated: August 6, 2015

By:



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cc: Service List for A.12-04-019 (with attachment)

ATTACHMENT

GEOSCIENCE

May 13, 2011

RMC WATER AND ENVIRONMENT
2290 North First Street, Suite 212
San Jose, CA 95131
Attn: Joe Green-Heffern

Re: RMC Project: 0139-011 – Section 9.1 – Project Records - Patents and Copyrights
Title of Subcontract: REGIONAL DESALINATION PROJECT PM SUBCONTRACT AGREEMENT FOR SERVICES

GEOSCIENCE Support Services, Inc. US Patent Application No. 12/478,886 – Slant Well Desalination Feedwater Supply System and Method for Constructing Same

Dear Joe:

As per Section 9.1 – Project Records of the subcontract dated May 2011, please consider this written notification that, in performing the work for the above-referenced contract, GEOSCIENCE Support Services, Inc. anticipates using the information and technologies contained in US Patent Application No. 12/478,886 – Slant Well Desalination Feedwater Supply System and Method for Constructing Same.

This patent application has been filed by GEOSCIENCE Support Services, Inc. And, as per the subcontract, by informing RMC WATER AND ENVIRONMENT in writing of the intent to use this proprietary/corporate patent information and technology, GEOSCIENCE Support Services, Inc. maintains that it is the sole owner of such technology and patent application, and does not transfer or assign any rights of ownership to RMC WATER AND ENVIRONMENT or the Marina Coast Water District, the Monterey County Water Agency, California American Water, or any other WPA Party who may join in the future. Please consider this written notification part of the written agreement between RMC WATER AND ENVIRONMENT and GEOSCIENCE Support Services, Inc.

Respectfully submitted,



Dennis E. Williams, Ph.D.
President
cc: Tony Valdivia

GEOSCIENCE SUPPORT SERVICES INCORPORATED

Ground Water Resources Development

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